HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Writ Petition No. 463 of 2003 (S/B)
(Old No. 1130 of 1999)

Date of decision: 21st December, 2005

A.F.R. (Approved for

Reporting) ~~Not Approved for~~

~~Reporting~~

Date Initials of Judge

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 463 (S/B) of 2003
(Old No. 1130 of 1999)

Sri Ram Kumar
S/o Kantu Ram, Age 35 years
R/o Nand Pur, Tehsil Roorkee,
District – Haridwar ... Petitioner

Versus

1. U.P. Public Service Tribunal
   Indra Bhawan Secretariat, Lucknow

2. U.P. Govt. through its Secretary Revenue
   Department Secretariat, Lucknow

3. S.D.M. Roorkee, District Haridwar

4. D.M. Haridwar

5. District Magistrate, Shaharanpur ...Respondents

Sri M.S. Pal-Sr. Advocate, counsel for the petitioner
Shri S.P.S. Panwar, Addl. C.S.C. (U.P.) and Shri J.P. Joshi, Addl. C.S.C.(Uttaranchal)

Coram: Hon. P.C. Verma, C.J.
Hon. J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. By means of this Writ Petition moved under Article 226 of the Constitution of India, the petitioner has sought a writ in the nature of certiorari quashing the impugned order dated 24.12.1996 and order of termination of service dated 14th December, 1989 (Annexure-1 & 2). The petitioner has also sought a writ in the nature of mandamus to give all benefits from the date of termination of the Service 14th December, 1989 till now.

2. The petitioner was appointed on the post of Lekhpal on 01.08.1990 after completing the training as provided under rules. Thereafter, a complaint was received against the petitioner that he obtained the recruitment on the basis of forged certificates and he was not qualified to be appointed as Lekhpal and he had not passed the high school examination. It was further alleged that the petitioner was selected for the training of the Patwari on the basis of certificates issued by the Central Board of Higher Education, Uttam Nagar, New Delhi and that qualification of high school is not equivalent to the High School recognized by Uttar Pradesh Higher Secondary Council, as such, the petitioner was not eligible for being appointed as Lekhpal.

3. Inquiry was made and it was found that the Central Board of Higher Education, Uttam Nager, New Delhi is not recognized by the U.P. Higher Secondary Council and the District Magistrate, Shaharanpur was of the opinion that the services of the petitioner should be dispense with. Meanwhile, the petitioner was posted in the Sub-division, Roorkee and the District Haridwar was carved out from Shaharanpur and he send the communication to the District Magistrate, Haridwar for dispensing with his services.

4. Thereupon, the S.D.M., Roorkee issued show cause notice to the petitioner and it was averred in

the show cause notice that the petitioner had got the appointment of Lekhpal on the basis of the certificate issued by the Central Board of Higher Education, Uttam Nagar, New Delhi which is not recognized by the Uttar Pradesh Board and it was further alleged that the said certificates was annexed with the application alleging therein that he has qualified the high school examination as recognized by the U.P. Board. It was further averred in the show cause notice that the petitioner sought the appointment of Lekhpal by fraudulent way. The said notice was served upon the petitioner and thereafter he relied the show cause notice and he specifically alleged the in para 2 of his reply that the petitioner had passed the high school examination from the Central Board of Higher Education, New Delhi and denied that the said institution is not recognized institution. He has further averred in para 3 that the said institution may not be recognized by the U.P. Board and Delhi Board but the same is recognized by Roorkee University, Jabalpur University, Karnataka University and others.

5. After considering the reply of the show cause notice of the petitioner, the services of the petitioner were terminated on 14.12.1989 and S.D.M. Roorkee has observed in his order that the petitioner had himself admitted that the above institution is not recognized under the U.P. Board or Delhi Board but the institution is recognized by Roorkee University, Jabalpur University and Karnataka University. The

petitioner was unable to prove that the certificate issued by the Central Board of Higher Education, Uttam Nagar, New Delhi is recognized by the Uttar Pradesh Higher Secondary Education. The S.D.M. further observed that the petitioner obtained the order of training and posting of Lekhpal pursuant to the said fraudulent certificates and the appointment as such is illegal and void ab-initio and accordingly his services were terminated.

6. Feeling aggrieved by the said order, the petitioner preferred the petition before the Public Service Tribunal, Lucknow for quashing the termination order dated 14th December, 1989. The Public Service Tribunal dismissed his petition vide order dated 24.12.1996.

7. Feeling aggrieved by the said judgment and order passed by the Tribunal, the petitioner has preferred a writ petition before the Allahabad High Court of Lucknow Bench and the same was transferred to Uttaranchal High Court after creation of the State of Uttaranchal State.

8. We have heard learned counsel for the parties and perused and record.

9. Learned counsel for the petitioner contended that the certificates of the Central Board of Higher Education, Uttam Nagar, New Delhi submitted by the petitioner was genuine one. The said certificates was not prepared and manipulated by the petitioner.

He had only produced it before the competent authority for being recruited as Lekhpal. It was further contended that the certificates was submitted to the competent authority at the time of the appointment. If the said institution was not recognized, his candidature should have been rejected at that time. It was further contended that the petitioner had worked satisfactorily about 9 year and he should not be terminated on the ground that he was not eligible on the date of appointment. The learned counsel for the respondents refuted the contention and contended that the petitioner submitted certificates of Central Board of Higher Education, Uttam Nagar, New Delhi showing that he had passed the high school examination. It was further contended that the petitioner himself had admitted in his explanation submitted to the S.D.M. that the said Central Board of Higher Education, Uttam Nagar, New Delhi is not recognized by the U.P. Board and it is recognized by he Roorkee University, Jabalpur University and Karnataka University and others. It was further contended that the petitioner could not adduce any order or evidence which would have revealed that the said certificates was recognized by the Uttar Pradesh Higher Secondary Board. It was further contended that the appointment was obtained by practicing fraud on the competent authority, therefore, the order of appointment was a nullity and non est and the petitioner could not get the benefit of pleading that he had been appointed on the basis of the said certificates.

10. The learned Tribunal after hearing the parties, observed that the petitioner passed the high school examination form the Central Board of Higher Education, Uttam Nagar, New Delhi and he submitted his marksheet and educational certificates with the false representation that he had passed the high school examination. He was selected for Lekhpal training and after successfully completing the training posted as Lekhpal. The learned Tribunal had also observed that the said certificates produced by the petitioner is not recognized by the High School and Intermediate Board, U.P. The petitioner was not eligible for being selected for the patwari training or for being appointed as Lekhpal. The appointment of the petitioner was illegal and void ab-initio. It was further observed that at the time of recruitment, it was not known to the respondents that the certificates submitted by the petitioner was invalid. The learned Tribunal further held that the show cause notice was served upon the petitioner and an opportunity was given to him. He had admitted in his explanation that the said degree is not recognized by the High School and Intermediate Education Board, U.P. The petitioner took a plea that he had been appointed as Lekhpal and he had worked for 9 years satisfactorily, therefore, he could not be terminated. The Tribunal observed that if he was not eligible for the post, his appointment is non est. Perusal of the record reveals that the petitioner himself has admitted in his explanation that the said Board of Delhi is not recognized in the State of U.P.

According to the advertisement, the petitioner was required to be high school or intermediate from the High School and Intermediate Education Board or equivalent thereof. The petitioner was not having the eligible qualification on the date when he gave application for being selected for the training of Lekhpal or being appointed as Lekhpal thereof, the petitioner made a fraudulent representation to the competent authority that he possesses the required qualification as made in the advertisement. The said false representation comes within the purview of fraud as such, the petitioner is not entitle to get any benefit of being appointed as Lekhpal. The show cause notice was issued to the petitioner and he had admitted that the said certificates is not recognized by the U.P. Board. He did not adduce any documentary evidence to show that the certificates filed by the petitioner was equivalent to high school recognized now by the High School & Intermediate Board, U.P. He did not adduce any documentary evidence to show that the certificates filed by the petitioner was equivalent to High School recognized now by the High School & Intermediate Board U.P.

11. The stand of the petitioner to the effect that he had put nearly about 9 years services and as such, he could not be terminated from the service is not tenable. Similar plea was taken in **Bank of India and another Vs. Avinash D. Mandivikar and others 2005 AIR SCW 4477** wherein it has been held in para 9 :-

"9. A similar pleas about long years of service was considered by this Court in R. Vishwanatha Pillai Vs. State of Kerala and others, (2004) (2) SCC 105) to be inconsequential. In para 19 it was observed:-

It was then contended by Sri Ranjit Kumar, learned Senior Counsel for the appellant that since the appellant has rendered about 27 years of service, the order of dismissal be substituted by an order of compulsory retirement or removal from service to protect the pensionary benefits of the appellant. We doe not find any substance in this submission as well. The rights to salary, pension and other service benefits are entirely statutory in nature in public service. The appellant obtained the appointment against a post meant for a reserved candidate by producing a false caste certificate and by playing a fraud. His appointment to the post was void and not est in the eye of the law. The right to salary or pension after retirement flows from a valid and legal appointment. The consequential right of pension and monetary benefits can be given only if the appointment was valid and legal. Such benefits cannot be given in a case where the appointment was found to have been obtained fraudulently and rested on a false caste certificate. A person who entered the service by producing a false caste certificate and obtained appointment for the post meant for a Scheduled Caste, thus depriving a genuine Scheduled Caste candidate of appointment to that post, does not deserved any sympathy or indulgence of this Court. A person who seeks equity must come with clean hands. He who come to the

court with false claims, cannot plead equity nor would the court be justified to exercise equity jurisdiction in his favour. A person who seeks equity must act in a fair and equitable manner. Equity jurisdiction cannot be exercised in the case of a person who got the appointment on the basis of a false caste certificate by playing a fraud. No sympathy and equitable consideration can come to his rescue. We are of the view that equity or compassion cannot be allowed to bend the arms of law in a case where an individual acquired a status by practicing fraud."

12. The Hon'ble Supreme Court in **Bank of India and another Vs. Avinash D. Mandivikar and others 2005 AIR SCW 4477** has held in 11:

"11. We find the conclusions of the High Court to be contradictory. On one hand the High Court faulted the reference which was made after about ten years and on the other hand accepted the findings of the Scrutiny Committee that the respondent No. 1 did not belong to Scheduled Tribe as was held by the Scrutiny Committee. Mere delay in making a reference does not invalidate the order of so the Scrutiny Committee. If the High Court felt that the reference was impermissible because of long passage of time, then that would have made the reference vulnerable. By accepting the findings of the Scrutiny Committee that the respondent No. 1-employee did not belong to Scheduled Tribe, the observations about the delayed reference loose significance. The matter can be looked into from

another angle. When fraud is perpetrated the parameters of consideration will be different. Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. This Court in ***Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others (JT 2005 (7) SC 530)*** *dealt with effect of fraud. It has held as follows in the said judgment:*

"14. … Fraud is proved when it is shown that a false representation has been made (i)knowingly, or (ii) Without belief in its truth, or (iii) recklessly, careless whether it be true or false.

15. This aspect of the matter has been considered by this Court in ***Roshan Deen Vs. Preeti Lal, (2002 (1) SCC 100); Ram Preeti Yadav Vs. U.P. Board of High School and Intermediate Education (2003 (8) SCC 311); Ram Chandra Singh's case (supra) and Ashok Leyland Ltd. Vs. State of T.N. and another (2004 (3) SCC 1).***

16. Suppression of a material document would also amount to a fraud on the Court. (See ***Gowrishankar Vs. Joshi Amba Shankar Family Trust (1996 (3) SCC 310) and S.P. Chengalvaraya Naidu's case (supra).***

17. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud but it can be evidence on fraud; as observed in ***Ram Preeti Yadav's case (supra).***

18. In ***Lazarus Estate Ltd. Vs. Beasley (1956) 1 QB 702,*** *Lord Denning observed at pages 712 and 713, "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything". In the same judgment Lord Parkar [] observed that fraud vitiates all transactions known to the law of however high a degree of solemnity (page 722)*

19. These aspects were recently highlighted in the ***"State of Andhra Pradesh and another Vs. T. Suryachandra Rao (2005 (5) SCALE 621)."***

13. In view of the forgoing discussion, we are of the view that the petitioner who entered the services by fraudulent representation that he is eligible for patwari training or for being appointed as Lekhpal and later on it was found that the petitioner was not qualified for being appointed as Lekhpal would definitely deprived a genuine candidate for the appointment to that post does not deserve any sympathy or indulgence of this Court. The petitioner had come to the Court to seek the equitable remedy with a false claim and the Court would be justified not to exercise the jurisdiction in favour of the petitioner who had suppressed facts before the competent authority for being appointed as Lekhpal.

14. In view of the a foregoing discussion, we are of the view that the learned Tribunal was justified in holding that the appointment order was illegal void ab-initio and non est.

15. We are completely in agreement with the findings recorded by the learned Tribunal.

16. In view of the above, the writ petition is liable to be dismissed and the same is accordingly dismissed.

(J.C.S. RAWAT, J.) **(P.C. VERMA, J.)**

21st December, 2005
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